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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/521,032	01/12/2005	Georges Sireix	METPAT P74AUS	6559
20210	7590	06/21/2006	EXAMINER	
DAVIS & BUJOLD, P.L.L.C. 112 PLEASANT STREET CONCORD, NH 03301			GERRITY, STEPHEN FRANCIS	
			ART UNIT	PAPER NUMBER
			3721	
DATE MAILED: 06/21/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/521,032

Applicant(s)

SIREIX, GEORGES

Examiner

Stephen F. Gerrity

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 12 January 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 11-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 11-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 January 2005 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 1/12/05.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### **Response to Preliminary Amendment**

1. Receipt is acknowledged of a preliminary amendment, filed 12 January 2005, which has been placed of record and entered in the file.

### **Information Disclosure Statement**

2. Receipt is acknowledged of an Information Disclosure Statement, filed 12 January 2005, which has been placed of record in the file. An initialed, signed and dated copy of the PTO-1449 form is attached to this Office action.

### **Drawings**

3. Replacement drawings were received on 12 January 2005.
4. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the
  - a. "means for closing one end of the can and for closing the second end after filling the can" (claim 14);
  - b. "two individual vacuum chambers" (claim 15);
  - c. "carriages provided with means allowing them to be moved..." (claim 18); and
  - d. "device to work and seal or glue a flange" (claim 20)must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended

replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### **Specification**

5. The abstract of the disclosure is objected to because:
  - a. in line 1, the language "The invention concerns a method ..." should be changed to --A method...--;
  - b. in line 5, "bobbin" should be changed to --reel--;
  - c. in line 5, "glueing" should be changed to --gluing--; and
  - d. in line 6, "a satellite device" should be changed to be consistent with the written description terminology. Correction is required. See MPEP § 608.01(b).

### **Claim Rejections - 35 USC § 101 and 112, 2<sup>nd</sup> paragraph**

6. 35 U.S.C. 101 reads as follows:

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Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

35 U.S.C. 112, 2<sup>nd</sup> paragraph reads as follows:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 14-20 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claims 14-20 are rejected under 35 U.S.C. 101 because the subject matter is directed to neither a "machine" nor a "process". Claim 14 recites "The installation for the implementation of the method according to claim 11" in lines 1 and 2, this recitation embraces or overlaps two different statutory classes of invention, namely a "machine" and "process", and thus fails to conform with 35 U.S.C. 101 which is drafted so as to set forth the statutory classes of invention in the alternative only.

Additionally, claims 14-20 are rejected under 35 USC. 112, 2<sup>nd</sup> paragraph as indefinite because claim 14 recites "The installation for the implementation of the method according to claim 11" which makes the claim language ambiguous. *Ex parte Lyell*, 17 USPQ2d 1548 (BPAI 1990). See MPEP § 2173.05(p)(II).

#### **Claim Rejections - 35 USC § 112, 1<sup>st</sup> paragraph**

8. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

9. Claims 20 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim contains subject matter which was not

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described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Claim 20, line 2, recites "device to work and seal or glue a flange inside the tube". The written description fails to provide support for this subject matter. It is not set forth in the written description as to what structure constitutes the "device to work and seal or glue a flange inside the tube" in a manner sufficient to teach one how to make and use the claimed invention.

**Claim Rejections - 35 USC § 112, 2<sup>nd</sup> paragraph**

10. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

11. Claims 11-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claims are generally narrative and indefinite, failing to conform with current U.S. practice. They appear to be a literal translation into English from a foreign document and are replete with grammatical and idiomatic errors.

It is noted that the claims 11-13 are directed to a method, but the body of each of the claims does not set forth method steps in a manipulative sense. Rather, the body of each of the claims is written in a descriptive or narrative fashion. It is suggested that the claims be amended or rewritten in a manner that makes use of manipulative language. For example, lines 7-9, should perhaps be amended to "feeding a continuous material having two longitudinal edges from a reel of said continuous material which is to form

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the interior sleeve, passing the fed material through a forming device for forming a tubular sleeve, and sealing the two longitudinal edges together" (note that the underlined words are manipulative terms).

It should also be noted that the preamble of claim 11 regarding the material structure of the interior sleeve and the cardboard having a precut weakness are considered to be required limitations of the claimed invention.

In claim 12, it is not clear from the claim language on to what "part" corresponding to the precut weakness applicant is referring.

In claim 13, line 1, the language "the operations" lacks proper antecedent basis.

In claim 14, line 1, "The" should be changed to --An--.

In claim 18, line 2, "or packing machine" lacks proper antecedent basis.

In claim 19, lines 2 and 3, "the device allowing to apply the cylinder against the mandrel" lacks proper antecedent basis. It is suggested that claim 19 be amended to depend from claim 15 as opposed to claim 14.

In claim 19, line 3, "the joints" lacks proper antecedent basis.

These and any other informalities should be corrected so that the claims may particularly point out and distinctly claim the subject matter which applicant regards as the invention, as required by 35 U.S.C. § 112, second paragraph.

### **Claim Rejections - 35 USC § 103**

**12.** The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**13.** Claims 11, 13 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Beauchamp (**US 4,187,137**) in view of applicant's admitted prior art, and in view of Plitz et al. (**US 4,813,208**).

Regarding claims 11 and 14, the Beauchamp reference discloses a method and installation for making tubular filled cans including a interior sleeve formed from a tight, fragile and flexible material (8) which is fed from a reel (fig. 6) over a mandrel (30) and passing through a former (34), the longitudinal ends of the material (8) are sealed together (using adhesive) to form a tubular interior sleeve, an outer layer (10) which includes a precut weakness (16) and which has a width corresponding to the periphery of a can and which has a length corresponding to the height of a can height is adhered to the sleeve (8), the cans (2) are obtained by cutting (54) the tube, one end of the can is hermetically closed by a lid (4) as seen in figure 6, the can is also shown as filled and with both ends closed (figure 1). The recited "means for ..." language in claim 14 is deemed to be met by the structure disclosed in the Beauchamp reference. Therefore, the Beauchamp reference meets all of applicant's claimed subject matter with the exception of the outer layer being cardboard, and the express recitation of the steps of closing hermetically one end of the can, and the can being filled with a product and the other end is also closed likewise.

Applicant admits that it is old and well known in the container forming art, see page 1, paragraph [0006], to provide an outer layer for a container in the form of cardboard. With the type of containers disclosed by Beauchamp and applicant's



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admitted prior art being similar in nature and use, it would have been obvious to one having ordinary skill in the art, at the time applicant's invention was made, to have substituted cardboard for the material (10) as the outer layer in the Beauchamp method and installation, in order to make use of a sturdy and readily available material.

Furthermore, the Plitz et al. reference makes a container, similar in nature and use to the ones of Beauchamp and applicant's admitted prior art, and which container is expressly taught as being formed, one end of the container is closed hermetically, the container is then filled and the other end is likewise closed hermetically (see figure 5, and col. 4, lines 30-65). It would have been obvious to one having ordinary skill in the art, at the time applicant's invention was made, to have modified the Beauchamp method and installation by having incorporated the steps of closing hermetically one end of the can, and the can being filled with a product and the other end is also closed likewise, as expressly taught by Plitz et al., in order to produce a filled and sealed can product.

Regarding claim 13, the "operations" are performed in a continuous and synchronized operation in the now modified Beauchamp method -- the language of this claim is broad enough to be read on the modified Beauchamp method as there is no specificity in the claim as to what constitutes the "operations".

**14.** Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 14 above, and further in view of Sireix (**FR 2,606,314**).

The modified Beauchamp installation for making the filled cans is considered to meet all of applicant's claimed subject matter with the exception of the various claimed

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devices being mounted on carriages provided with means allowing them to be moved between predetermined positions forwards and backwards. The Sireix reference discloses that it is old and well known in the relevant art to provide carriages for various devices used in a similar can making installation, in which the carriages are provided with means allowing them to be moved between predetermined positions forwards and backwards (see translated abstract attached to reference). It would have been obvious to one having ordinary skill in the art, at the time applicant's invention was made, to have further modified the Beauchamp installation for making filled cans by having included the devices being mounted on carriages provided with means allowing them to be moved between predetermined positions forwards and backwards, as suggested by Sireix, for the purpose of making the cans in a continuous and synchronized manner.

#### **Allowable Subject Matter**

15. Claims 12, 15-17, 19 and 20 would be allowable if rewritten to overcome the rejections under 35 U.S.C. 101 and/or 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

#### **Conclusion**

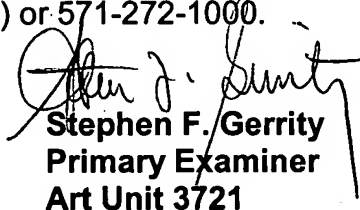
16. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The references listed on the attached form (PTO-892) are cited to show methods and installations for forming/filling/sealing tubular packages. All are cited as being of interest and to show the state of the prior art.

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17. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen F. Gerrity whose telephone number is 571-272-4460. The examiner can normally be reached on Monday - Friday from 5:30 - 2:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi Rada can be reached on 571-272-4467. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
**Stephen F. Gerrity**  
**Primary Examiner**  
**Art Unit 3721**

10 June 2006